

MINUTES OF BOARD OF ADJUSTMENT
DECEMBER 4, 2008
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Zoning Administrator LeAnn Klein called the meeting to order at 4:03 o'clock P.M. in the absence of Chairperson Bosshamer with a quorum present on December 4, 2008 at the Buffalo County Board of Supervisors room in the Buffalo County Courthouse, Kearney, Nebraska.

Agenda for such meeting was regularly posted as required by law. Present were: Larry Fox, Sharon Martin, Lloyd Wilke and Barb Pemberton Riege. Absent: Ann Bosshamer and Marlin Heiden. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and four members of the public.

Zoning Administrator asked for a motion for Vice Chairperson.

Motion was made by Martin, seconded by Riege to nominate Lloyd Wilke as Vice Chairperson. Voting yes were Martin, Riege, Fox and Wilke. Voting no: none. Absent: Bosshammer and Heiden. Klein then turned the meeting over to Vice Chairperson Wilke.

Vice Chairperson Wilke announced we do abide by the open meeting act and there is a copy posted in the County Board room and copies are available for anyone wanting to see it. The public forum was opened at 4:05 P.M. No one was present. The public forum closed at 4:05 P.M.

Vice Chairperson Wilke opened the hearing at 4:05 P.M. for the zoning variance filed by Lana Sullwold for the West 288.0 feet of the North 216.0 feet of Government Lot 1 in Section 31, Township 9 North, Range 17 West of the 6th p.m., Buffalo County, Nebraska, containing 1.428 acres, more or less, of which 0.218 acres, more or less, are presently being used for road purposes. Thereafter, Board heard testimony regarding application of the variance submitted by Lana Sullwold, concerning property in Buffalo County, Nebraska.

Lana Sullwold said her parents built this home in 1963 and the ground is rented to another party. The renter owns the pivot. This house is currently vacant and they want to sell off this home site. She said they had no knowledge that zoning required a 3 acre minimum and it wasn't until the surveyor had surveyed the property when they were told they needed at least 3 acres. They have a long-term lease with the renter of the ground. The well is within 75' of the pivot and they have a corner pivot which makes it difficult to come up with additional land.

Deputy County Attorney Hoffmeister asked the following questions:

1. He asked if there had been a survey done of this property.
2. He asked what this property is zoned.
3. Is this more then 1000' from another residence in the same quarter?
4. Is gravity irrigation used?

Sullwold responded as follows:

1. A survey had been done of this property.
2. Klein said this property is zoned AG.
3. There no other residences that are within 1000' of this home
4. This spring it was gravity irrigated.

Klein wanted the record to reflect her office had a call from Marvion Reichert and Marvion wasn't sure if he could be here today and wanted the record to show he didn't have any problems as long as he could do the same down the road.

Klein also presented aerial maps to the Board.

Wilke questioned if they could change the irrigation pattern.

Sullwold replied they did not own the pivot and they have a long-term lease with the renter.

Riege asked if there was any way they could add property to the east of this site. Sullwold said they had looked at that but it wasn't possible. Sullwold said they have a long-term lease with the renter for the entire property. Sullwold told the Board this is really a hardship.

They don't want to rent this out because renters do not take care of property.

Martin asked how close the nearest residence is. Sullwold told her there was a house ½ mile west and ½ mile north.

Mrs. Sullwold questioned what is grandfathering. She said this house has been at this site since 1963.

This house has always been part of the entire parcel.

Riege said the intent of the size of lots assures adequate space for septic systems in the future.

Hoffmeister explained that 70,000 square feet is allowed in AGR in an approved subdivision.

Mr. Sullwold said he needs access by the shelter belt on the east to access the pivot. An ordinary pivot wouldn't have been a problem.

Mrs. Sullwold said this home has been in her family for a long time and she inherited it from her Mother.

The Board questioned if we are setting precedence for future requests.

Hoffmeister asked if there was any litigation going on in this vicinity? He thought there was possible litigation on water issues in this area.

Mr. Sullwold said the pivot comes very close to the building site.

Mrs. Sullwold feels the house has been there for a long time.

Fox asked if they could add another 100' to the survey and Sullwold responded she won't do that. She doesn't want to take away any more land and add onto this building site.

The Board feels they could add onto this property to at least come up with the 70,000 square feet.

Mr. Sullwold said they had the surveyors look at adding onto the surveyed area but they couldn't come up with additional land without affecting the pivot.

Vice Chairperson Wilke closed the public hearing at 4:30 P.M.

Wilke thinks there is more land that would be available to the east without affecting the pivot. He thought there would be more land in the windbreak to the east. If we do approve this, are we setting precedence for future application? Will the new owners run into problems with Nebraska Department of Environment Quality?

Sullwold told the Board she is being panelized because her parents were farmers.

Fox asked if it would be too much to ask to come up with more ground to at least have 70,000 square feet. Sullwold replied she won't split off any farm ground.

Motion was made by Martin, seconded by Fox to grant the variance received from Lana Sullwold on the following property described as West 288.0 feet of the North 216.0 feet of Government Lot 1 in Section 31, Township 9 North, Range 17 West of the 6th p.m., Buffalo County, Nebraska, containing 1.428 acres, more or less, of which 0.218 acres, more or less, are presently being used for road purposes.

Riege feels there is really not a hardship because more land is available. The sale of the property could be subject to an easement with access to the pivot.

Voting yes were Martin and Fox. Voting no: Wilke. Abstain: Riege. Absent: Bosshamer and Heiden. Prior to announcement of vote, motion was made by Riege, seconded by Martin to table this application until next month when all the members will be present to hear the application. Voting yes were Riege, Martin, Fox and Wilke. Voting no: none. Absent: Bosshamer and Heiden.

Hoffmeister advised that any vote to allow a variance requires a vote of 4. Because there are only four Board members present, the vote would need to be unanimous.

Chairperson announced that by consent of persons present, vote on this request would be tabled until next regular meeting together with any public meeting that might be required to discuss the application.

The Board has concerns there will be problems in the future with the septic and they feel a solution can be found by at least having 70,000 square feet.

Klein stated this hearing will be held on January 8, 2009 at 4:00 P.M.

Vice Chairperson Wilke opened the next hearing at 4:50 P.M. for a variance application received from Robert and Linda Grassmeyer to relax the rear setback on property described as a tract of land being part of Government Lot 1 located in Section 7, Township 9 North, Range 16 West of the 6th p.m., Buffalo County, Nebraska more particularly described as follows: Beginning at the Northeast Corner of Government Lot 1 of said Section 7 and assuming the North line of said Government Lot as bearing S 89°45' 3" W and all bearings contained herein are relative thereto; thence S 89° 45' 03" W and on the aforesaid North line a distance of 185.86 feet; thence S 00° 37' 20" E a distance of 597.08 feet; thence N 89° 45' 03" E a distance of 176.57 feet to a point on the East line of Government Lot 1 of said Section 7; thence N 00° 16' 11" E and on the aforesaid East line a distance of 597.09 feet to the place of beginning, together with rights of ingress and egress over and across a 60.0 foot strip of land which abuts the above described tract of land on the West.

Attorney Steve Lowe was present on behalf of Mr. & Mrs. Grassmeyer. He told the Board neither Mr. and Mrs. Grassmeyer could attend today because of their jobs. He submitted an affidavit from Randy Erickson, marked as Exhibit 1, who owns adjoining property on the east side of Mr. Grassmeyer. Mr. Erickson does not object to this structure being located too close to the property lines.

Hoffmeister asked what part of the existing building the addition was added. Lowe told him the addition was added onto the east side of the existing building.

Lowe told the Commission Mr. Grassmeyer had added onto an existing building since he had purchased a 53' grain trailer and he wanted to be able to put the grain trailer inside the building since this area is a developed area. The grain trailer is 5' longer than existing building. Lowe also submitted pictures of the property, marked as Exhibits #2-6 and identified each picture. If Mr. Grassmeyer knew about the requirements he wouldn't have done this. Mr. Grassmeyer contacted his neighbor Mr. Erickson and his neighbor was not opposed to this addition.

Wilke asked if he had filled out a zoning permit.

Martin said on the paperwork they had received it listed Gifford Construction as the builder.

Klein told the Board she had first contacted Grassmeyer on 10/22/08 about needing a zoning permit. Grassmeyer sent in a permit on 10/30/08 and Klein said she disapproved the permit on 10/30/08 and sent Grassmeyer a letter also dated 10/30/08 advising Grassmeyer he could appeal her decision to the Board of Adjustment. In the letter dated 10/30/08, she informed Grassmeyer of the 15' requirement for rear setbacks in AGR.

Lowe questioned why Klein had told his client he needed a permit and then when Grassmeyer sends in a permit, she denies it.

Klein told Lowe she had a phone call from someone advising her of the construction and she knew there was a problem with the rear setback.

Hoffmeister said the County could have filed an injunction and there would be a per day fine levied on this property.

Klein stated Grassmeyer called her after she sent out the first letter and Grassmeyer told her he had been advised by his attorney that this was in the Agricultural (AG) district and there were no rear setbacks in the AG district. She told Grassmeyer this property was in Agricultural-Residential (AGR)

Martin questioned if Gifford Construction doesn't have a responsibility to obtain a zoning permit before construction begins.

Klein told the Board Grassmeyer had previously applied for a permit for a home across the street.

Lowe doesn't know what the alternative is. The building is existing and is compatible with what is there. Grassmeyer wants to park the truck inside so the neighbors won't have to look at it. He could dismantle the building but that involves a lot of money and then the truck would have to be parked outside.

Hoffmeister replied there are merits on parking the truck inside the building. There are also issues with the existing road. He questioned if there is a light on the east side of the building. Grassmeyer could have expanded the building to the west since there is plenty of room.

Vice Chairperson Wilke closed the public hearing at 5:10 p.m.

Fox said the thing that upsets him is Grassmeyer went ahead and finished the building knowing the building was not in compliance.

Motion was made by Martin, seconded by Riege to deny the variance submitted by Robert and Linda Grassmeyer to relax the rear setback on property described as a tract of land being part of Government Lot 1 located in Section 7, Township 9 North, Range 16 West of the 6th p.m., Buffalo County, Nebraska more particularly described as follows: Beginning at the Northeast Corner of Government Lot 1 of said Section 7 and assuming the North line of said Government Lot as bearing S 89°45' 3" W and all bearings contained herein are relative thereto; thence S 89° 45' 03" W and on the aforesaid North line a distance of 185.86 feet; thence S 00° 37' 20" E a distance of 597.08 feet; thence N 89° 45' 03" E a distance of 176.57 feet to a point on the East line of Government Lot 1 of said Section 7; thence N 00° 16' 11" E and on the aforesaid East line a distance of 597.09 feet to the place of beginning, together with rights of ingress and egress over and across a 60.0 foot strip of land which abuts the above described tract of land on the West. Voting yes to deny the variance was Martin, Riege and Fox. Voting no: Wilke. Absent: Bosshamer and Heiden. Motion to deny request to relax setback passed, i.e. no relaxation of zoning code provisions will be allowed in this situation as presented.

Moved by Martin, seconded by Fox to approve the minutes of November 13, 2008 meeting of the Board of Adjustment as mailed. Voting yes were Martin, Fox, Wilke, and Riege. Voting no: none. Absent: Bosshamer and Heiden. Motion carried.

Moved to adjourn at 5:24 P.M. until January 8, 2009.